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Ontario Labour Relations Board HIGHLIGHTS

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November 2014

NOTICES TO THE COMMUNITY

DIRECTOR/REGISTRAR AND DEPUTY DIRECTOR/REGISTRAR

Congratulations to **Catherine Gilbert** who has been appointed the **Director/Registrar** and to **Ursula Boylan** who was the successful candidate for the position of Deputy **Director/Registrar**.

TOWN HALL MEETING

Meeting to gather feedback from stakeholders on the changes the Board implemented for the 2013 Open Period.

Please see the attached note for more information.

NEW CASE MANAGEMENT SYSTEM

Further to the memo attached to the July 2014 *Highlights* that described a number of changes associated with the introduction of a new case management system at the Board, we have tweaked a number of forms and processes.

NOTICES TO EMPLOYEES

There used to be C forms that were sent with Confirmations of Filing that were **Notices to Employees** of various applications filed with the Board. These C forms have been eliminated, superseded by a generic Notice to Employees that is being sent out with the CofFs. The C forms that are now relegated to **Obsolete** are: C-2, C-5, C-33, C-36 and C-53.

CONFIRMATION OF POSTING

Form A-124 is used for all Confirmations of Posting that Employers are required to complete and file with the Board. Employers are now also required to post their Responses in addition to posting the Application and any Notices issued by the Board. In Certs and Terms, the Employer has been given **one day after its Response or Intervention is due** to file their Confirmation of Posting, verifying that the Employer has posted the Application, Notice to Employees and Response. The Confirmation of Posting is later used for other purposes as well. Employers are expected to generate fresh copies of the A-124 whenever they need to confirm a subsequent posting.

All the A Forms, Information Bulletins, Procedural Guides and Confirmations of Filing relating to Certs and Terms have been amended to advise the Employer that the Confirmation of Posting is due no later than one day after the Response/Intervention was due. The Confirmation of Posting is also to be delivered to the other parties when it is being filed with the Board (the CofF already says so; so does Form A-124). **Obsolete** are: A-5, A-10, A-13, A-23, A-26, A-76, A-82 and A-85.

What have been **amended:**

A-1, A-6, A-7, A-8, A-71, A-72, A-75, A-77, A-79, A-81 (plus an unrelated typo in A-83)

C-1, C-4, C-32, C-35

IB-1, IB-2, IB-6, IB-7

SCHEDULES A, B and C (Certs and Terms)

Board Forms and Information Bulletins have been amended to conform to the wording in Confirmations of Filing that advert to the Excel format available for Lists of Employees. The Applicant is required to provide Employers with hard copies of the Excel Schedules. Employers now should be filing their lists both electronically in Excel and in hard copy. Instructions about the Excel Schedules should be more generally available (in CofF, in Info Bulletins). Board directions provide that *only these Schedules* can be filed electronically, to the vote.coordinator@ontario.ca. This direction for e-filing has been added to the Instructions tab on the Excel forms.

ACCREDITATION

A new Information Bulletin (No. 33) describes the process for employer accreditation in the construction industry.

PROCEDURAL GUIDES

These will be updated to reflect the above changes, as well as other processing reforms (notably, the move to **one signed original**). They should be posted within the next month.

SCOPE NOTES

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in October of this year. These decisions will appear in the September/October issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute www.canlii.org.

Bargaining rights – Bargaining unit – Certification – Construction industry – Termination – Voluntary recognition – Local 183 sought the termination of bargaining rights contained in a voluntary recognition agreement (VRA) executed between the Employer and the Carpenters – Local 183 also submitted a card-based application for certification – The Board looked first to the validity of the VRA – The VRA was drafted to include only those employees working on Phase II of the Employer's two-phase construction project – At the time the VRA was entered into, Phase I employees were the only direct construction employees employed – The Employer intended to employ an entirely new set of workers on Phase II with the same skills as the existing Phase I workforce, to perform the same duties, in the same Board Area – Allowing the VRA to subsist would undermine the statutory purpose in s. 2 of the Act – Trade unions are to be freely-designated representatives of the employees – The VRA encompassed an entirely artificial bargaining unit and deprived existing employees of freedom of choice in trade union representation – The Board determined that the bargaining unit of the VRA properly included both Phase I and II employees – Consequently, the Board found that the Carpenters did not represent a majority of employees in the bargaining unit on the date the VRA was entered into – In the alternative, even if the bargaining unit set out in the VRA was found to be appropriate, the Board would not have found it to be a valid pre-hire agreement – The Carpenters were found to be supplying almost nothing to the employer and provided far short of the labour supply required to substantiate a valid pre-hire agreement – The Board found that the bargaining unit proposed in Local 183's application for certification was appropriate for collective bargaining – Carpenters' bargaining rights terminated; Local 183's certification application allowed

2271848 ONTARIO LIMITED o/a LIVANTE DEVELOPMENTS; RE: Labourers' International Union of North America, Local 183; RE: The Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America, on its own behalf and on behalf of its constituent union, Allied Construction Employees Local 1030; RE: 2271850 Ontario Limited o/a LiVante Developments; OLRB File Nos: 2456-13R; 3149-13R; Dated: October 2, 2014; Panel: Jack J. Slaughter (19 pages)

Damages – Discharge – Health and Safety – Remedies – Reprisal – Termination – The applicant suffered serious injury as a result of unsafe work conditions at a hair salon – Upon being informed of the incident, the employer did not take any steps to address the hazard, nor did it report the injury to WSIB – The applicant lodged a complaint with the Ministry of Labour and was subsequently terminated – At the hearing, the applicant sought to amend the application to list two numbered corporate entities as respondents – The Board found that the applicant had acted throughout in good faith, and justice required the Board to exercise its discretion in these circumstances and amend the filing – The Board found that the definition of "employer" in the Act, in conjunction with Board Rule 40.8, allows for more than a single corporate entity to be an

employer – No one appeared for the respondent employers – The Board found that the respondents had acted unfairly and in bad faith, and in contravention of s. 50 of the Act – The Applicant was entitled to lost wages and aggravated damages for mental distress – In calculating lost wages, the Board also included damages for lost opportunity of future employment – The Board followed the approach of the Supreme Court of Canada in awarding aggravated damages – The Board considered it appropriate to incorporate remedial developments in the law of wrongful dismissal in an OHSA reprisal case – The Board further stressed the heightened importance of aggravated damages in situations where an employer's conduct also violates a statutory norm designed to protect workers – Application allowed

817775 ONTARIO LIMITED C.O.B. PRO-HAIRLINES AND 1731950 ONTARIO INC.; RE: Brenda Bastien; OLRB File No. 1560-13-OH; Dated October 27, 2014; Panel: Thomas Kuttner, Q.C. (20 pages)

Discharge – Duty of Fair Representation – Grievance – Practice and Procedure – The applicant alleged the Union acted in violation of section 74 when it withdrew her grievances against the employer – The applicant was charged criminally in relation to an act committed in the course of her employment – Initially, the applicant was suspended with pay; however, pay was revoked when charges were laid – The applicant was later terminated by the employer, citing an applicable provision in the collective agreement – The Union filed grievances with the employer regarding the suspensions and the discharge – The grievances were held in abeyance, pending the outcome of the criminal proceedings – The criminal charges were dismissed and the applicant agreed that she would not seek employment at any other long-term care centres operated by Peel Region – The Union did not proceed to arbitration with the grievances — Although the Union wished to call witnesses on the day of the consultation to explain its decision not to proceed, the Board declined to permit this given that the Union did not plead any justification in its response – Further, a proceeding on an alleged breach of section 74 should be expeditious – The Board found that the Union did not provide reasons for why it acted in the manner that it did – Application allowed – Grievance to proceed to arbitration on issue identified by the Board

DIANA MOSS; RE: CUPE Local 966; RE: The Regional Municipality of Peel; OLRB File No. 3571-13-U; Dated October 8, 2014; Panel: Brian McLean (8 pages)

Collective Agreement – Construction Industry Grievance – This grievance arose out of a situation where the union referred a member, C, in response to a call for labour and the employer refused to re-hire C as a result of two incidences for which he was never disciplined – The Board reviewed the "refusal to hire" jurisprudence and found that the employer's right to refuse will depend on the language of the collective agreement, particularly those clauses addressing the scope of management rights and union security – Further, where management rights does not include selection and where the employer is required to hire those cleared by the union, then the Board's case law has uniformly determined that "the employer does not have an unbridled right of rejection in dealing with certified tradesmen referred to it", but rather has an implied right to "reject persons it believes to be unreliable or incompetent or otherwise unqualified subject to acting reasonably, in good faith without discrimination" – Here C had yelled at a site superintendent and had misconducted himself in a safety meeting, but was not disciplined for either event – He was laid off for lack of work – The Board found that the employer's reliance on workplace incidents or conduct known to it at the time when C's previous period of employment ended cannot be a reasonable basis for a later refusal to rehire, where C was not put on timely notice that that would be the case – Grievance allowed; remedy remitted to parties

EASTERN POWER LIMITED; RE: International Brotherhood of Electrical Workers, Local 530; OLRB File No. 1350-14-G; Dated October 15, 2014; Panel: Mary Anne McKellar (9 pages)

Employment Standards – The employer appealed the order to pay arising from the Employment Standard Officer's finding of improper payroll deductions – Sales representatives signed a payroll deduction authorization form which included a $25 bi-weekly deduction for a "demonstration vehicle insurance deductible" – The Board found this was not a deduction for a driving error made at work or for faulty work – Rather the deduction was a benefit to the employee and provides personal use coverage for any damage a demonstrator vehicle may sustain – The authorization form precisely set out the specific amount of the deduction in accordance with the Act – Application allowed

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LEGGAT CHEVROLET CADILLAC BUICK GMC LTD.; RE: Peter Calvert, Elisabeth Greiser-Roefeen et al; RE: Director of Employment Standards; OLRB File No. 3462-13-ES; Dated October 22, 2014; Panel: Kelly Waddingham (4 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
College Employer Council Divisional Court No.397/14	1143-14-CV	Pending
Dean Warren Divisional Court No.345/14	2336-13-U	Pending
LIUNA- Trisan Divisional Court No.342/14	2620-13-G 2001-13-G et al	Pending
Donald A. Willams Divisional Court No.327/14	1129-13-U	Pending
PCL Constructors Canada Inc. Divisional Court No. 240/14	3414-11-G	Pending
Bogdan Koscik Divisional Court No. DC-14-000636-00JR **(Newmarket)**	0956-13-U	Pending
John Harrison Divisional Court No. 189/14	1375-13-U	Pending
Mary McCabe Divisional Court File No.14-2012 **(Ottawa)**	2737-12-U	Pending
LIUNA - Rudyard; Zzen Divisional Court No. 485/13	0318-13-R	April 27, 2015
2218783 Ontario Inc. Divisional Court No. 13-DV-0133 **(Brampton)**	2872-12-ES	Pending
Merc Electrical Limited Divisional Court No. 437/13	0452-13-G	Pending
Godfred Kwaku Hiamey Divisional Court No. 345/13; 346/13	2906-10-U 3568-10-U	Pending
Durval Terciera, et al Court of Appeal No. C 58059 & C58146	1475-11-U	September 11, 2014 Reserved
EllisDon Corporation Court of Appeal No. C58371	0784-05-G	October 8, 2014 Reserved
EllisDon Corporation Divisional Court No. 309/12	2076-10-R	Pending
Hassan Hasna Divisional Court No. 83/12	3311-11-ES	Pending

John McCredie v. OLRB et al Divisional Court No. 1890/11 **(London)**	1155–10–U	Pending
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 213/11	0816–10–U 0817–10–U	Dismissed; Seeking Motion to set aside
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 383/10	0290–08–U 0338–08–U	See above
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045–06–U et al	See above

Ontario Labour Relations Board

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Ontario

ONTARIO LABOUR RELATIONS BOARD
TOWN HALL MEETING
LESSONS TO BE LEARNED FROM
2013 CONSTRUCTION INDUSTRY OPEN PERIOD

The OLRB is hosting a Town Hall gathering to receive feedback from stakeholders on the changes the Board implemented for the 2013 Open Period. It will be held on:

Tuesday, November 25, 2014
Time: 4:30 – 6:30 P.M.
Aspen Room

Counsel and members of the labour community are invited to attend and to bring any comments, constructive criticism and/or ideas for not only the next open period, but changes that can be usefully made to other Board proceedings and procedures. The Board is particularly interested in feedback on the following points:

a) Case Review System
b) Case Management Hearings Process
c) Scheduling

The Board will also review written submissions by counsel or members of the community received by December 2, 2014.

If the Board is considering any ideas put forward at the Town Hall or in the written submissions, these may be added to the next Advisory Committee meeting agenda for further input prior to making any changes.

RSVP to: hodo.omer@ontario.ca;
Subject line: Town Hall RSVP

Please advise the number of participants.